IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2028 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

DISTRICT PANCHAYAT

Versus

NOORMOHMED GAGUBHAI ADMANI

Appearance:

MR PV HATHI for Petitioners

MR TR MISHRA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 20/06/2001

ORAL JUDGEMENT

1. RULE. Learned counsel Mr.T.R.Mishra waives service of Rule for the respondent.

2. By way of this petition, the employer authority of the District Panchayat has challenged the award of the Industrial Tribunal, Rajkot dated 9.8.1996 in Reference (ITR) No.216 of 1988 whereby the petitioner is directed to make the concerned workman permanent in service with effect from 4.8.1991 and pay the consequential benefits.

3. The respondent workman, a watchman, appears to have raised an industrial dispute and agitated the grievance through a trade union with the case that he had put in continuous service right from 5.8.1981 and as a qualified person worked on a permanent post and yet was denied the benefits available to a permanent employee. The defence of the petitioner before the Tribunal was that in terms of the Resolution dated 17.10.1988 of the Government, the workman was paid the fixed wages, dearness allowance and other benefits, and was not entitled to any other and further benefits. There was no dispute about the fact that the benefits as aforesaid were accorded to the workman and that he was working since 5.8.1991. After appreciating the evidence and considering the aforesaid Resolution, the Tribunal held that, even under the Resolution, the workman was entitled to be made permanent with effect from 4.8.1991 in the pay scale of Rs.750-940. And the workman having passed his SSC Examination, he was directed to be made permanent in the clerical cadre with effect from 4.8.1991.

4. While addressing his arguments, the learned counsel for the petitioner fairly conceded that the Tribunal had the jurisdiction to award such benefits as are granted by the impugned award, particularly in view of the Division Bench judgment of this Court reported in 1993 (2) GLR at page 997 (Kalol Municipality & others v. Shantaben Kalidas & others) as also according to a recent Division Bench judgment of this Court in Letters Patent Appeal No.828 of 1996 (Surendranagar District Panchayat v. Surendranagar Jilla Panchayat Mazdoor) (Coram: D.M.Dharmadhikari, CJ and J.M.Panchal, J.). Factually, there was a consensus that the workman concerned was already made permanent with effect from 14.10.1994 by the order dated 20.9.2000. It is also conceded that all the concomitant and consequential benefits were being accorded to the workman concerned with effect from 14.10.1994. In these facts and circumstances, the learned counsel for the respondent workman submitted that the workman is satisfied with the benefits and the status accorded by the above order dated 20.9.2000 and does not insist on getting the benefits with effect from 4.8.1991 as ordered by the impugned award. In this view of the matter, the petition is required to be partly allowed to

modify the impugned award so that the same accords with the actual factual position.

5. Accordingly, the petition is partly allowed and the impugned award is modified to the extent that the workman concerned shall be taken to have been made permanent with effect from 14.10.1994 in terms of the order of the petitioner dated 20.9.2000 and he shall be entitled to all the benefits of permanency with effect from that date. Rule is made absolute in the aforesaid terms with no order as to costs.

6. The award being modified as above in terms of the order of the petitioner, it is expected that the petitioner shall fully implement its own order dated 20.9.2000 by paying the due amounts under the same, if they are not still paid, within a reasonable period of three months from today, to the respondent workman.

Sd/-

20.6.2001 (D.H.Waghela, J.)

(KMG Thilake)